

Message Text

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-----141321Z 062466 /50
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FM SECSTATE WASHDC
TO AMEMBASSY LAGOS PRIORITY

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E.O. 11652: N/A

TAGS: EINV, NI

SUBJECT: AIIC CASE

1. AS REPORTED REFTEL, AIG PRESIDENT GREENBERG AND OTHER
COMPANY REPS CALLED ON DEPUTY ASSISTANT SECRETARY BOEKER
JUNE 3 TO DISCUSS AIIC CASE IN NIGERIA. FOLLOWING POINTS
WERE COVERED DURING DISCUSSION.

2. GREENBERG REITERATED COMPANY'S DISSATISFACTION WITH
TERMS OF SALE OF FIRST 49 PERCENT EQUITY TO FMG AND NOTED
THAT IF SALE OF ADDITIONAL 11 PERCENT INTEREST CANNOT
BE ACCOMPLISHED ON TERMS SATISFACTORY TO COMPANY, IT WILL
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HAVE NO CHOICE BUT TO PURSUE CLAIM OF EXPROPRIATION.
COMPANY REPS THEREFORE SOUGHT USG INTERVENTION "AT HIGH
LEVEL" TO PERSUADE FMG TO ENTER INTO GOOD FAITH NEGOTIA-
TIONS AIMED AT A FAIR SETTLEMENT WHICH THE COMPANY COULD
ACCEPT.

3. IN RESPONSE TO QUESTIONS, GREENBERG AND OTHERS AFFIRMED

THAT COMPANY COULD VISUALIZE SETTLEMENT PACKAGE THAT INCLUDED OTHER ELEMENTS IN ADDITION TO CASH PAYMENT, SUCH AS TECHNICAL SERVICES AGREEMENT. THEY ALSO NOTED THAT COMPANY VIEWED CONTINUED PARTICIPATION IN NIGERIAN OPERATIONS UNACCEPTABLE WITHOUT ITS HAVING EFFECTIVE

MANAGEMENT CONTROL. COMPANY IS CONCERNED THAT LESS THAN ADEQUATE COMPENSATION COULD SET UNDESIRABLE PRECEDENT FOR ITS OPERATIONS IN OTHER COUNTRIES. ACCORDING TO COMPANY REPS, COMPENSATION RECEIVED UNDER TERMS OF FIRST SALE AMOUNTED TO LESS THAN ONE PERCENT OF MARKET VALUE, AND UNLESS SECOND SALE TAKES THIS FACT INTO ACCOUNT, OVERALL SETTLEMENT WILL BE HIGHLY UNFAIR. COMPANY REPS REPEATED CHARGES OF FMG COERCION ARISING FROM COMPULSORY NATURE OF ACQUISITION. THEY RECALLED, FOR INSTANCE, THAT AIIC REMITTANCES WERE BLOCKED APPARENTLY IN ORDER TO OBTAIN THE COMPANY'S AGREEMENT TO TERMS OF FIRST SALE. GREENBERG SAID HE WOULD BE WILLING TO TRAVEL TO NIGERIA FOR DIRECT TALKS WITH FMG IF IT WOULD HELP PROMOTE SATISFACTORY SETTLEMENT.

4. DEPARTMENT REPS NOTED THAT WHILE WE COULD NOT PREDICT WHAT USG POSITION WOULD BE IN THE EVENT SALE OF 11 PERCENT EQUITY CANNOT BE ACCOMPLISHED ON TERMS ACCEPTABLE TO COMPANY, COMPENSATION FOR FIRST 49 PERCENT ALREADY APPEARED VERY LOW AND WE COULD FORESEE POSSIBILITY THAT USG WOULD HAVE TO CONCLUDE THAT AN EXPROPRIATION HAD TAKEN PLACE WITHOUT ADEQUATE COMPENSATION. DEPARTMENT REPS THEREFORE AGREED TO DRAFT STATEMENT FOR DELIVERY TO FMG LIMITED OFFICIAL USE

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AT APPROPRIATELY HIGH LEVEL AGAIN REFERRING TO DISSATISFACTION OF COMPANY OVER TERMS OF FIRST SALE AND EXPRESSING HOPE THAT SECOND SALE CAN BE ACCOMPLISHED ON MUTUALLY SATISFACTORY TERMS.

5. ACCORDINGLY, AMBASSADOR IS REQUESTED TO DELIVER FOLLOWING STATEMENT TO APPROPRIATE MEMBER OF SUPREME MILITARY COUNCIL. COPY OF STATEMENT SHOULD BE LEFT AS AIDE MEMOIRE.

BEGIN QUOTE: THE USG UNDERSTANDS THAT THE FMG INTENDS TO ACQUIRE BY JULY 1, 60 PERCENT OF AMERICAN AS WELL AS OTHER FOREIGN-OWNED INSURANCE COMPANIES DOING BUSINESS IN NIGERIA. WE RECOGNIZE THE RIGHT OF A GOVERNMENT TO NATIONALIZE FOREIGN INVESTMENT IN THE ABSENCE OF SPECIFIC UNDERTAKINGS TO THE CONTRARY, SO LONG AS IT IS FOR A PUBLIC PURPOSE, NOT DISCRIMINATORY, AND ACCOMPANIED BY PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION. WE VIEW

THESE CONDITIONS AS THE MINIMUM STANDARDS REQUIRED BY INTERNATIONAL LAW.

IN THAT REGARD, AS WE STATED IN OUR NOTE TO THE FMG DATED (EMBASSY PLEASE INSERT DATE) THE AMERICAN INTERNATIONAL GROUP (AIG) WHICH WHOLLY OWNS THE AMERICAN LIFE INSURANCE

COMPANY (ALICO) OF WILMINGTON, DELAWARE, HAS EXPRESSED ITS DISSATISFACTION OVER THE TERMS BY WHICH THE FMG EARLIER COMPULSORILY ACQUIRED FROM ALICO 49 PERCENT EQUITY INTEREST IN THE AMERICAN INTERNATIONAL INSURANCE COMPANY (NIGERIA) LTD. (AIIC). THE USG APPRECIATES THE FMG'S INFORMATIVE NOTE OF (EMBASSY INSERT DATE) DESCRIBING THE BASIS FOR THE NIGERIAN GOVERNMENT'S VALUATION OF 2 NAIRA PER SHARE FOR THE ACQUISITION OF 49 PERCENT

OF AIIC'S SHARES. IN THE VIEW OF THE USG, HOWEVER, THERE LIMITED OFFICIAL USE

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IS EVIDENCE THAT THE COMPENSATION RECEIVED BY THE FIRM IS QUITE LOW IN RELATION TO THE APPARENT FAIR VALUE OF THE ASSETS ACQUIRED.

IN THIS CONTEXT, THE USG WISHES TO URGE THAT THE SALE OF THE ADDITIONAL 11 PERCENT OF AIIC'S SHARES, AS WELL AS OTHER AMERICAN-OWNED INSURANCE COMPANIES, WHICH WILL RESULT IN A TRANSFER OF THE CONTROLLING PORTION OF THE COMPANY'S EQUITY, TAKE PLACE ON MUTUALLY ACCEPTABLE TERMS AND CONDITIONS THAT CONSTITUTE ADEQUATE COMPENSATION.

SHOULD THE FMG ACQUIRE CONTROL OF AMERICAN-OWNED INSURANCE COMPANIES IN THE ABSENCE OF FREELY NEGOTIATED AND AGREED SALES, THE USG WOULD BE REQUIRED BY U.S. LAW TO DETERMINE WHETHER AN EXPROPRIATION OF THE ASSETS OF A U.S. INVESTOR HAD OCCURRED WITHOUT ADEQUATE COMPENSATION. WE BELIEVE IT WOULD BE TO OUR MUTUAL ADVANTAGE TO SEEK TO AVOID THE NECESSITY FOR SUCH A DETERMINATION IN THE INTEREST OF PREVENTING THE UNWANTED AND UNFORTUNATE EFFECTS IT COULD HAVE ON THE NIGERIAN INVESTMENT CLIMATE. THIS IS PARTICULARLY TRUE AT THIS TIME IN REGARD TO EFFORTS TO ATTRACT FOREIGN INVESTMENT IN NIGERIA. THEREFORE WE ARE HOPEFUL THAT

NEGOTIATIONS BETWEEN THE FMG AND AMERICAN-OWNED INSURANCE COMPANIES WILL LEAD TO A SATISFACTORY AND MUTUALLY AGREED RESULT. END QUOTE.

6. IN DELIVERING THIS STATEMENT, YOU MAY WISH TO REFER TO FOLLOWING TALKING POINTS:

-- WE ARE NOT NOW TAKING POSITION ON MERITS OF AIIC CASE,
BUT ARE CONCERNED THAT PAYMENT UNILATERALLY DECREED BY
NIGERIA FOR CONTROLLING INTEREST IN AIIC MAY WELL NOT

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CONSTITUTE ADEQUATE COMPENSATION CONSISTENT WITH THE
REQUIREMENTS OF INTERNATIONAL LAW.

-- IN SUCH AN EVENT, WE MIGHT BE FORCED TO MAKE DETERMINA-
TION OF INADEQUATELY COMPENSATED EXPROPRIATION. WHILE
HAVING RELATIVELY LITTLE IMPACT ON NIGERIA IN TERMS OF
U.S. LEGISLATIVE SANCTIONS, SUCH A DETERMINATION WOULD
PROVIDE UNDESIRABLE SIGNAL TO U.S. INVESTORS; THIS COULD
HAVE UNFORTUNATE EFFECTS, ESPECIALLY IN VIEW OF U.S.
AND NIGERIAN EFFORTS CURRENTLY UNDERWAY TO STIMULATE
INVESTMENT IN NIGERIA.

-- AIG PRESIDENT GREENBERG HAS INFORMED US HE WOULD BE
WILLING TO TRAVEL TO NIGERIA TO DISCUSS MEANS FOR
ARRIVING AT A MUTUALLY SATISFACTORY ARRANGEMENT IF THE
NIGERIAN GOVERNMENT FELT THIS WOULD BE USEFUL.

-- WE RECOGNIZE THAT AN ONGOING RELATIONSHIP--SUCH AS
A CONTRACT FOR MANAGEMENT AND TECHNICAL SERVICES--MIGHT
BE VIEWED AS AN ELEMENT IN THE SETTLEMENT AND THUS
BE HELPFUL IN ARRIVING AT A MUTUALLY ACCEPTABLE SOLUTION.

-- POSSIBLY THE FMG MAY WISH TO CONSIDER THIRD PARTY
ARBITRATION OR AN INDEPENDENT EVALUATION OF AIIC ASSETS.

7. FYI: WE RECENTLY RECEIVED INDICATIONS FROM AN
AMERICAN DIRECTOR OF THE BRITISH AMERICAN INSURANCE COM-
PANY THAT THE FIRM IS ALSO UNHAPPY ABOUT THE IMPENDING
60 PERCENT ACQUISITION BY THE FMG AND IS CONSIDERING
REQUEST FOR USG INTERVENTION AIMED AT MORE FAVORABLE
SETTLEMENT. WE WOULD THEREFORE NOT WISH TO PREJUDICE
A POSSIBLE FUTURE DEMARCHE ON BEHALF OF THE SECOND FIRM
BY UNDULY EMPHASIZING AIIC AS SPECIAL CASE.

8. AS EMBASSY MAY BE AWARE, THE LEGALLY MANDATED EXPRO-
PRIATION SANCTIONS WOULD COME INTO PLAY BUT WOULD
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HAVE LIMITED IMPACT IN THE CASE OF NIGERIA. THE

HICKENLOOPER AMENDMENT WOULD HAVE APPLICATION TO OUR LIMITED ECONOMIC ASSISTANCE AND MILITARY PROGRAMS IN NIGERIA. THE GSP EXCLUSION IN THE TRADE ACT WOULD BE MOOT SINCE NIGERIA IS INELIGIBLE AS A MEMBER OF OPEC. THE GONZALEZ AMENDMENT WOULD CALL ON US TO VOTE AGAINST LOANS TO NIGERIA FROM INTERNATIONAL FINANCIAL INSTITUTIONS, BUT WE COULD NOT VETO THEM, AND NIGERIA IS NOT DEPENDENT ON SUCH LOANS IN ANY CASE. NONETHELESS, OUR DESIGNATION OF NIGERIA AS AN EXPROPRIATOR WHO HAS NOT MET ITS COMPENSATION OBLIGATIONS WOULD ADVERSELY AFFECT THE CLIMATE FOR FOREIGN INVESTMENT, AS WELL AS CREATING

A TROUBLESOME IRRITANT IN U.S. NIGERIAN RELATIONS. END
FYI. VANCE

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